

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**Dated this the 30<sup>th</sup> day of January 2024

Filed on 28 12 2020

**PRESENT**

Shri D B Binu

Shri V Ramachandran

Smt Sreevidhia T N

President

Member

Member

**C.C No.442/2020****COMPLAINANT**

Jolly P.F., S/o Francis, Pattamana House H.No.359, Olanad, Varapuzha P O  
Pin-683 517, Ernakulam.

**VS****OPPOSITE PARTY**

Badriya, Exclusive Furniture, Badriya Tower, Kottoor, Indianoor P.O. Kottackal,  
Malappuram-676 503.

**FINAL ORDER****D.B. Binu, President:****1. A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainant had placed an order for a Wardrobe (Order No. 6505, dated 21st September 2018) with a total value of ₹16,500/- with the opposite party at an exhibition conducted at Kallor International stadium Ernakulam. To initiate the order, an advance payment of ₹500/- was made as per the terms specified in the opposite party's order form. However, despite the agreed-upon terms, the furniture has not been delivered as of today

The complainant, in good faith, signed the order form and remitted the ₹500/- advance payment to the opposite party. The wardrobe has remained undelivered, and the opposite party has consistently assured delivery whenever requested, which has not materialized even after two years. This continuous delay and lack of fulfilment have amounted to a breach of trust and a failure to uphold their commitment.

The complainant's financial situation was further exacerbated by the 2018 floods, making it impossible to pay the remaining balance of ₹16,000. Subsequently, the complainant contacted the opposite party to inquire about

the possibility of changing the ordered item model and having it delivered. The opposite party had initially assured that any item could be delivered upon payment of the required price, leading the complainant to contact them numerous times and share a sketch along with this complaint through WhatsApp. Despite numerous phone calls and assurances from the opposite party that the work was complete and delivery imminent, the ordered furniture has not been received by the complainant, constituting a clear violation of their promise.

In February 2020, during an exhibition at Kaloor, the complainant revisited the opposite party's stall, showed the old order form, and proposed obtaining a chair in place of the wardrobe. The opposite party agreed, with the condition that an amount of ₹3,250 be paid, deducting the advance payment of ₹500. An assurance was given that the chair would be delivered to the complainant's home within two days, but to date, the chair has not been received.

Given these circumstances, the complainant has sought redressal through the Consumer Commission, seeking justice and restitution for the hardships endured as a result of the opposite party's deceptive practices. The complainant has suffered both mentally and physically due to the unfulfilled promises and cheating by the opposite party. The complainant has presented the necessary documents as evidence to support their case before the Commission.

The Commission is requested to consider the aforementioned circumstances and information, recognize the complainant's suffering and losses, and provide appropriate compensation for the damages incurred as a result of the opposite party's actions.

## **2) Notice**

The Commission sent notice to the opposite party, which was returned as refused by the opposite party and is treated as deemed service, they did not file their version. Therefore, they have been set as ex-parte.

### 3) Evidence

The complainant had filed an ex-parte proof affidavit and two documents that were marked as Exhibits-A-1 and A 2.

**Exhibit-A-1:** A copy of Order Form No. 6505 dated September 21, 2018, issued by the Opposite Party.

**Exhibit-A-2:** A copy of the furniture sketch sent by the complainant to the Opposite Party via WhatsApp.

### 4) The main points to be analysed in this case are as follows:

- i) Whether the complaint maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

### 5) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. A copy of Order Form No. 6505 dated September 21, 2018, issued by the Opposite Party. The receipt evidencing payment to the opposite party (**Exhibits A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The complainant is pursuing legal action to address the non-delivery of the product, the resulting mental distress, and has raised allegations of unfair trade practices and inadequate service on the part of the opposite party. They

are seeking compensation and a resolution to their complaint through legal proceedings.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite party. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations leveled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

In a case decided by **the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, In II (2020) CPJ 468 (NC)**, the **appellant, OCUS SKYSCRAPERS REALTY LTD.**, appealed against an order dated 18.12.2018 issued by the Delhi State Consumer Disputes Redressal Commission. The case involved housing-related issues, including the forfeiture of earnest money and default in payment of instalments, which were deemed as a deficiency in service under the Consumer Protection Act, 1986.

The State Commission directed the appellant to refund the amount received from the complainant, along with an 8% interest rate from the date of payment receipt until the date of refund.

The appellate authority ruled that interest on the balance amount of Rs 15,87,459 would be payable to the complainant at a rate of 10% per annum from May 1, 2014, until April 29, 2019. After that date, the complainant would be entitled to the proportionate interest that had accrued on the amount of Rs 15,87,459.

This case revolves around the consumer complaint filed by the complainant. The essence of the complaint is the non-delivery of a Wardrobe (Order No. 6505, dated 21st September 2018) with a total value of ₹16,500/- despite an advance payment of ₹500/-.

### **I. Complainant as a Consumer:**

As per Section 2(7) of the Consumer Protection Act, 2019, a consumer is defined as someone who buys goods or hires services for a consideration paid or promised, either partially or in deferred payments. In this case, the complainant, clearly qualifies as a consumer, having placed an order for goods (wardrobe) and having made an advance payment to the opposite party. Hence, the complainant's status as a consumer under the Act is established.

### **II. Deficiency in Service and Unfair Trade Practices:**

The complainant alleges deficiency in service and unfair trade practices on the part of the opposite party. Despite the advance payment, the ordered wardrobe was not delivered as agreed upon, causing mental distress and financial hardship to the complainant. The opposite party failed to provide evidence of any loss incurred due to the complainant's default.

Furthermore, the opposite party failed to respond to the Commission's notice, returning it without acknowledgment, and did not file a written version. This non-compliance effectively amounts to an admission of the allegations made by the complainant.

### **III. Legal Precedent:**

In support of the complainant's case, the Hon'ble National Consumer Disputes Redressal Commission's order dated 2017 (4) CPR page 590 (NC) is cited. It underscores the principle that an appellant's failure to contest allegations can be construed as an admission of the complainant's claims.

While it is true that the complainant failed to make the required payment for the product, the opposite party did not provide evidence to

substantiate any loss incurred as a result of this default. Moreover, when the Commission sent a notice, it was returned as refused, and the opposite party did not submit their version before the Commission.

*Often, the organizers of exhibitions, trade fairs, and festivals fail to maintain an efficient customer grievance redressal system. When customers face issues with products or services purchased at these events, resolution is typically only possible if they revisit the site of the exhibition or fair with paid entry pas. This approach undermines the consumer's right to effective complaint resolution. To rectify this, it's recommended that organizers set up dedicated counters at these events specifically for addressing grievances. Moreover, for those who regularly host such events, establishing a year-round online system for grievance redressal is advisable. This system should involve the relevant vendors and traders to ensure effective resolution of complaints. Implementing such measures will not only enhance the credibility and goodwill of the organizing bodies but also uphold consumer rights.*

In light of these circumstances, the Commission has determined that the opposite party did not experience any financial losses due to the complainant's order. Consequently, the opposite party is legally obligated to refund the advance amount to the complainant.

We find that issues (I) to (IV) are in favour of the complainant due to the substantial deficiency in service and unfair trade practices exhibited by the opposite party.

Hence the prayer is partly allowed as follows:

- I. The Opposite Party shall refund the advance payment of ₹500/- (Rupees Five Hundred) made by the complainant, as documented in **Exhibit-A-1**.
- II. The Opposite Party shall also pay the complainant ₹5,000/- (Five Thousand Rupees) towards the cost of the proceedings.

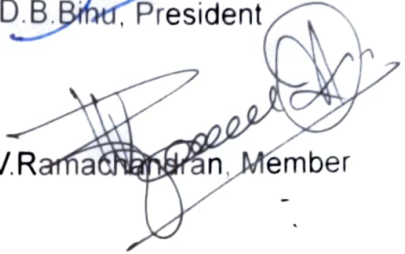
The Opposite Party is hereby held liable for the aforementioned directions, which must be complied with within 30 days from the date of receiving a copy

of this order. Failure to do so will result in the amounts specified in (i) above incurring interest at a rate of 9% from the date of filing the complaint (28.12.2020) until the date of full payment.

Pronounced in the Open Commission on this 30<sup>th</sup> day of January 2024.



D.B. Binu, President



V. Ramachandran, Member



Sreevidhya T.N. Member